

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

TIMOTHY BREMER, Individually and on behalf of all others similarly situated,

Plaintiff,

v.

SOLARWINDS CORPORATION, KEVIN B. THOMPSON, and J. BARTON KALSU,

Defendants.

Case No. 1:21-cv-00002-RP

CLASS ACTION

DANIEL AZPURUA, Individually and on behalf of all others similarly situated,

Plaintiff,

v.

SOLARWINDS CORPORATION, KEVIN B. THOMPSON, and J. BARTON KALSU,

Defendants.

Case No. 1:21-cv-00047-RP

CLASS ACTION

Caption continued on next page.

**UNOPPOSED MOTION OF NEW YORK CITY DISTRICT COUNCIL OF
CARPENTERS PENSION FUND FOR CONSOLIDATION OF RELATED ACTIONS,
APPOINTMENT AS LEAD PLAINTIFF, AND APPROVAL OF LEAD PLAINTIFF'S
SELECTION OF LEAD COUNSEL**

NEW YORK CITY DISTRICT COUNCIL OF
CARPENTERS PENSION FUND, on behalf of
itself and all others similarly situated,

Plaintiff,

v.

SOLARWINDS CORPORATION, KEVIN B.
THOMPSON, and J. BARTON KALSU,

Defendants.

Case No. 1:21-cv-00138-RP

CLASS ACTION

Presumptive Lead Plaintiff New York City District Council of Carpenters Pension Fund (“NYC Carpenters”), hereby moves this Court, unopposed, pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, for entry of an order consolidating the above-captioned related securities class actions (the “Actions”). NYC Carpenters also respectfully submits that, pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78u-4(a)(3)(B), as amended by the Private Securities Litigation Reform Act of 1995 (the “PSLRA”), it is the “most adequate plaintiff” and requests that the Court appoint it as Lead Plaintiff and approve its selection of Bernstein Litowitz Berger & Grossmann LLP (“Bernstein Litowitz”) as Lead Counsel for the Class.

This unopposed Motion is made on the grounds that the Actions are subject to the PSLRA, which provides a specific process that guides the initial stages of the litigation. The PSLRA provides that prior to appointing a lead plaintiff, the Court must first render a decision on a motion to consolidate. *See* 15 U.S.C. § 78u-4(a)(3)(B)(ii). Consolidation is appropriate under Rule 42(a) when, as here, the “actions before the court involve a common question of law or fact[.]” Fed. R. Civ. P. 42(a).

The Court is also to appoint a Lead Plaintiff to oversee the prosecution of the action. *See* 15 U.S.C. § 78u-4(a)(3)(B)(ii). Only Class members that either filed a complaint or a motion by the statutory deadline are eligible to be appointed as Lead Plaintiff. *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(aa). No other Class member filed a motion seeking appointment as Lead Plaintiff by the March 5, 2021 deadline and, therefore, the only Class members eligible for appointment as Lead Plaintiff are those that filed complaints. Under the PSLRA, there is a strong presumption that NYC Carpenters is the “most adequate plaintiff.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I).

Specifically, NYC Carpenters should be appointed Lead Plaintiff because, of the three eligible Class members that filed complaints, it has the “largest financial interest” in the relief sought by the Class in the action. NYC Carpenters also satisfies the typicality and adequacy requirements of Rule 23 of the Federal Rules of Civil Procedure and is perfectly situated to represent all Class members. Further, NYC Carpenters fully understands the Lead Plaintiff’s obligations to the Class under the PSLRA and is willing and able to undertake the responsibilities entailed in serving as Lead Plaintiff to guarantee the vigorous prosecution of this action.

NYC Carpenters further requests that the Court approve its selection of Bernstein Litowitz as Lead Counsel. *See* 15 U.S.C. § 78u-4(a)(3)(B)(v). Bernstein Litowitz is a nationally recognized securities class action litigation firm that has recovered more than \$33 billion for defrauded investors. Accordingly, the claims of the proposed Class will be well-protected by the approval of Bernstein Litowitz as Lead Counsel.

This unopposed Motion is supported by the accompanying Memorandum of Law, the Declaration of Gerald T. Drought and exhibits annexed thereto, the pleadings and other filings herein, and such other written or oral argument as may be permitted by the Court.

WHEREFORE, NYC Carpenters respectfully requests that the Court: (i) consolidate the Actions; (ii) appoint it as Lead Plaintiff; (iii) approve its selection of Bernstein Litowitz as Lead Counsel for the Class; and (iv) grant any such further relief as the Court may deem just and proper.

COMPLIANCE WITH LOCAL RULE CV-7(i)

I hereby certify that on March 9, 2021, counsel for NYC Carpenters conferred with counsel for Plaintiff Daniel Azpurua (“Azpurua”), counsel for Plaintiff Timothy Bremer (“Bremer”), and counsel for Defendants regarding the contents of this filing. Azpurua does not oppose consolidation of the Actions or the appointment of NYC Carpenters as Lead Plaintiff and Bernstein

Litowitz as Lead Counsel. Bremer does not take a position with respect to this Motion. Defendants do not oppose consolidation of the Actions and do not take a position with respect to the appointment of Lead Plaintiff or Lead Counsel.

DATED: March 9, 2021

Respectfully submitted,

MARTIN & DROUGHT, P.C.

/s/ Gerald T. Drought

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CERTIFICATE OF SERVICE

I certify that on March 9, 2021, a true and correct copy of the foregoing document was filed with the Clerk of Court using the CM/ECF system, which will send electronic notification of such filing to all counsel of record.

/s/ Gerald T. Drought
Gerald T. Drought